

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4814 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAGAR SOMABHAI

Versus

STATE OF GUJARAT

Appearance:

MR LN MEDIPALLY for Petitioners

MS. H.B. PUNANI for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 09/04/99

ORAL JUDGEMENT

The petitioners seek a direction on the respondents that they should regularise their services as mason, plumber, watchman, pump operator etc. as shown in Annexure-A to the petition and that a direction should be given that they should be paid similar salary and other benefits as are given to the permanent employees.

The Supreme Court in DELHI DEVELOPMENT

HORTICULTURE EMPLOYEES' UNION VS. DELHI ADMINISTRATION reported in AIR 1992 SC 789 indicated in paragraph 15 of the judgement the pernicious consequences to which the direction for such regularisation would lead. It was observed thus:-

"Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time bound and

there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

In view of the said decision and in view of the fact that the petitioners have no right to be regularised with retrospective effect the main prayer of the petitioners of being regularised in services with retrospective effect falls to the ground.

The petitioners were working as daily wagers under the respondent No. 2 Executive Engineer and they were paid the prevalent daily wages of Rs. 15.25 ps. per day. According to the petitioners, the regular employees in similar posts were getting basic pay of Rs. 350/- per month. There is no indication in the petition as to what allowances they were getting. Even in context of the basic pay such permanent employees were drawing, the amount of Rs. 15.25 ps. per day paid to the daily wagers would work out to nearly Rs. 390/- per month. It cannot therefore be said that at the relevant time when these wages and salaries prevailed the petitioners were discriminated against. It is not their case that any daily wager was paid more than what they were paid. The petitioners had no right to draw regular pay scales and allowance permissible to the permanent employees. In context of the type of work the daily wagers were uniformly paid and cannot be said to be unjustly treated or discriminated against in violation of their fundamental rights. The petition is therefore rejected. Rule is discharged with no order as to costs.

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